



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Vossbrink

**SUBJECT: GOOGLE FIBER HUT
LICENSE FORM
AGREEMENT**

DATE: June 11, 2014

Approved

Date

6/11/14

RECOMMENDATION

- (a) Accept status report on the City's efforts to submit information requested by Google Fiber for its consideration of selecting San José for the future installation of a Google Fiber network; and
- (b) Adopt a resolution approving the form of a master Network Hut License Agreement with Google Fiber for individual sites following City Council approval of such individual sites.

OUTCOME

The specific outcome of this recommendation would be an agreement with Google Fiber that provides an overall framework for terms regarding the future installation of essential elements of a community-wide, residential high-speed fiber network.

Among other priority outcomes for San José would be potential benefits for economic and community development. The future availability of residential high-speed Internet service could strengthen community connectivity, build a foundation for home-based businesses, and provide an attraction for an engaged Silicon Valley workforce. At the same time, the City is committed to achieving fair access to digital services throughout the community, which is a goal that Google Fiber also shares and refers to as "digital inclusion." Google has worked closely with Kansas City and Austin areas to develop mechanisms and funding to support access to digital services that align with local priorities and partners.

BACKGROUND

Google Fiber is Google's "fiber-to-the-premises" project to install and provide residential broadband high-speed internet service to U.S. cities. Google introduced the project in spring 2010 with the selection of Kansas City, Kansas (and subsequently to Kansas City, Missouri, and

nearby suburbs) following a nationwide competition. Google expanded its project in 2013 by including Austin, Texas; and Provo, Utah.

In February this year, Google announced its intention to extend its fiber project and invited 34 cities in nine metropolitan areas as candidates for potential expansion. Silicon Valley cities included San José along with Palo Alto, Mountain View, Sunnyvale, and Santa Clara. Google requested that cities submit extensive information regarding local ordinances, regulatory conditions, policies, rights-of-way, permitting requirements, and compatible infrastructure such as existing conduit, water, gas, and electricity lines by May 1.

The City of San José had submitted all the information requested by Google by the May 1 deadline, with the exception of a Council-approved form license agreement for the potential siting of fiber infrastructure called “fiber huts” on non-right of way, City-owned property. The proposed agreement with Google Fiber would complete the checklist process. Staff prepared an information memo to Council on the status of the Checklist on May 2, 2014 (<https://www.piersystem.com/external/content/document/1914/2157637/1/05-02-14CMO.PDF>).

Over the coming months Google will be evaluating all the submissions from cities to determine which areas it will choose for expanding its fiber network, and it expects to make these decisions by the end of 2014. If Google selects San José or Silicon Valley in general, staff will return to the City Council with updated information regarding possible schedules, City resource requirements, and lease agreements for specific potential fiber hut sites as appropriate.

The City has long been supportive of private-sector projects and public-private partnerships that would enhance community connectivity. Such projects have included the recent and successful launch of the “Wickedly Fast Downtown Wi-Fi” system and the City’s support of AT&T’s “Project Lightspeed” in 2006. Current City policies support streamlined and efficient permitting processes for telecommunications infrastructure, along with appropriate protections for community impacts such as esthetics, neighborhood disruption, and public safety.¹

ANALYSIS

Google Fiber requested information about potential City-owned, non-right of way properties in San José to locate “fiber huts,” which are network equipment nodes that could serve approximately 20,000 households each. For San José, Google would need approximately 15 fiber hut sites, although the exact number and locations would depend on final network design and the availability of suitable properties. Google is seeking sites, preferably on City-owned property, that would be at least 1400 square feet, accessible to the street, and distributed throughout the

¹ See City Council Policy 6-20 “Land Use Policy for Wireless Communication Facilities”; City Council Policy 7-10 “Placement of Communication Facilities on City-Owned Property”; and City Council Policy 0-40 “Framework for Establishing Demonstration Partnerships”.

community. The fiber huts themselves would be pre-fabricated structures approximately 28 feet long, 12 feet wide, and 9 feet high.

The City has provided Google with an inventory of such City-owned properties that might meet minimum requirements and that are not otherwise restricted for other City purposes or potential development. Google Fiber would also seek suitable sites needed for its overall network from other public agencies or private owners and enter into similar agreements with those owners.

Once specific sites are determined as part of Google's network design, individual fiber hut licenses with the City would be finalized, including any site-specific special conditions and environmental clearance. However, prior to City's execution of any individual fiber hut licenses under the master hut license agreement, staff would return to City Council for approval of the specific sites that would be subject to those licenses. All other fiber hut sites, whether located on private property or publicly owned land, would be subject to City permitting approval processes and other applicable regulation.

Google has requested that participating cities include an approved form of a master agreement that would be the basis of individual "fiber hut licenses" for the specific sites once they are identified. The proposed term of the master license agreement will be for 20 years, and thereafter renewing automatically at two-year intervals unless either the City or Google terminated the agreement.

Fiber Hut License Issues and Terms

Key terms and issues associated with the agreement are as follows:

Lease rate. The agreement calls for Google Fiber to pay the City \$3.50 per square foot per year for the use of City-owned property for a fiber hut. This would escalate at four percent per year over the duration of the specific site agreement. Based on the assumption of a minimum 1400-square-foot site, Google thus would pay the City approximately \$5000 per site per year. This rate is significantly lower than what staff considers a market value for using City-owned property, but it would apply only to sites that would otherwise not be developable or needed for any other current or anticipated public purposes as determined by the City. In addition, this rate reflects the potential value of the community-wide benefits that could derive from the installation of a comprehensive high-speed fiber network serving neighborhoods throughout San José. The City has expressed a direct interest in improving quality of life for residents through improved access to high-speed broadband services, and the Google Fiber project represents a realistic opportunity for this to occur. Because the proposed agreement contains a non-discriminatory provision with other network providers, if the City receives similar proposals seeking the use of City-owned property for the installation a comparable community-wide high-speed fiber network, then a similar rate would be applied.

Specific sites to be determined. The general Fiber Hut License agreement does not identify specific sites that Google Fiber might want to lease from the City. The City will carefully screen

its limited inventory of properties that might be available and suitable for the fiber network to eliminate any that could have greater value for development or for sale, or for other potential public purposes in the future. Fiber huts could be located on a variety of low-value sites that would not have other significant designated purposes. These could include locations such as remnant parcels that fall short of zoning development standard minimum sizes; have environmental constraints, regulatory restrictions, or access or utility issues; or could be located in areas such as under freeway overcrossings, in corporation yards, or next to electric substations or pumping plants. All sites for the installation of fiber huts on City-owned property would require specific City Council approval for each site. Fiber huts located on sites owned by other entities would require appropriate City permits in order to comply with City zoning and building standards and to mitigate neighborhood impacts.

Legal issues. During the course of staff discussions with Google Fiber, several legal issues have required extensive negotiations. The proposed agreement contains certain provisions that present a certain level of risk to the City. The City Administration believes that this risk would be a tradeoff to achieve the potential benefits of an extensive high-speed broadband network for the community. These specific provisions with potential risks are:

a) Indemnification. The proposed agreement does not contain the standard City indemnification language that provides direct indemnification for actions of Google which cause damage to the City's property or employees. Google believes that notwithstanding a specific provision in the contract, the City can still seek damages against Google. The City Administration believes this issue is mitigated since the City retains the ability to file claims or suits if necessary, and sites would be located to minimize exposure to any City assets. Google will only agree to include a provision that would allow damages or harm to third-parties would be indemnified by Google Fiber.

b) Consent to assignment of the agreement. The Agreement contains a provision that allows the City to consent to an assignment of the Agreement unless the agreement is assigned in connection of any future merger, acquisition, or sale of all or most of the Google Fiber network assets to another entity. The agreement specifies that City consent would not be required if it involves all or most of the Google Fiber network, rather than minor elements such as a single fiber hut, which would require City consent.

c) Relocation of hut site. Google is requiring that the City use its "best" efforts rather than "reasonable" efforts to find an alternative site if the City determines that it needs one of the sites which contain a fiber hut. If the City would need to find an alternative site if a fiber hut needed to be relocated, the City would have a higher standard to meet in finding an alternative site. If no City-owned property that has any foreseeable municipal purpose or plans is made available for use as fiber hut sites, the potential need for relocation will be minimized.

Digital inclusion. As noted above, a key priority for the City is ensuring reasonably fair access to digital services throughout the community. In the proposed fiber hut license, Google notes that it "intends to incrementally construct and operate a fiber optic network throughout various parts

of the City on a build-to-demand basis.” This is not a guarantee that a fiber network would eventually serve the entire community and all neighborhoods. Google’s approach in Kansas City and Austin has been to solicit system subscribers in advance of construction, and then install the network in phases as the density of customers in various “fiberhoods” reaches a level that is practical for the network to move ahead.

Google Fiber has expressed its commitment to “digital inclusion” in order to address the need for greater connectivity for residents in neighborhoods that have not reached a critical mass of subscriptions. To this end, Google has worked closely with public and non-profit partners in the Kansas City and Austin areas to develop mechanisms, partnerships, and funding to support greater access to digital services that align with local priorities.

According to Google, its approach to Digital Inclusion in Kansas City, Provo, and Austin has been to provide gigabit Google Fiber connections to public and non-profit organizations selected by cities at no cost for a defined period of time. Those cities have selected schools, libraries, community centers, and other public facilities for this purpose. An example of this is in Austin, where Google has agreed to provide broadband Internet services through its fiber network, free of charge until 2023, to city hall, and up to 100 sites. These primarily include public or non-profit facilities in Austin that provide access and services directly to residents through what they call the “Community Connections” program. Google has indicated that they will extend some version of this program to any new Fiber City, although it may take a slightly different form, focusing on smaller non-profit organizations, and will likely not include services to schools, libraries and/or government facilities.

Other Silicon Valley cities. Staff has reached out to the other Silicon Valley cities that are involved in the Google Fiber Checklist process to identify issues that neighboring cities have in common. Although Google has not indicated whether it might select just a single city or some combination of the five interested cities for its fiber network, San José and neighboring cities will continue to coordinate their efforts to achieve results that would benefit the residents of Silicon Valley in general. The City is not aware that Google has negotiated an agreement with any of the other cities in the Silicon Valley.

POLICY ALTERNATIVES

Alternative #1: Accept staff recommendation for a master Network Hut License Agreement with Google Fiber as described in this memo.

Pros: The development of a high-speed, broadband communications network would eventually serve much of the San José community over time and provide the benefits of greater connectivity and a stronger economy.

Cons: The proposed lease rate for City-owned property is lower than market rates; there is a level of risk associated with potential issues of indemnification, assignment and relocation

efforts; and there is no guarantee that if Google selects San José that its fiber network would ultimately serve the entire community.

Alternative #2: Direct staff to attempt to negotiate different terms with Google Fiber for the Fiber Hut License Agreement.

Pros: It may be possible to achieve more favorable terms related to lease rates for huts or legal issues.

Cons: Google has strongly indicated that the proposed terms are consistent for all the cities it is working with, and that modifying these terms would likely not be successful or could jeopardize the potential for the selection of San José for fiber installation.

FISCAL IMPACT

There is no fiscal impact at this time. When specific fiber hut sites in San José are identified, the City will receive approximately \$5000 per year in rent per site. The exact amount will depend on the sizes and number of sites.

Google will expand its fiber network at its cost, which would include paying the costs of City permitting, inspection, and property associated with the project. The City Manager has included in the FY 2014-2015 Proposed Budget a recommendation to allocate \$100,000 to support initial City activities in advance of future agreements with Google that would include terms for cost-recovery.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: Email and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: Email, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum to Council will be posted on the City's website for the June 17, 2014 Council Agenda.

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COORDINATION

The Fiber Hut License agreement has been coordinated with the City Attorney's Office, Office of Economic Development, Public Works Department, and Planning, Building and Code Enforcement Department.

CEQA

Not a project.

Specific locations for installation of fiber huts have not been determined yet. This is for an agreement to determine the feasibility of a potential project with no commitment to future action. The appropriate CEQA clearance will be determined for each location once location and the complete project have been identified.

/s/

David Vossbrink

Director of Communications

For questions, please contact David Vossbrink, Director of Communications, at 408-535-8170.